randum in opposition to the Motion to Advance filed herein on October 6th, 1930.

This case involves an arrest and search and seizure by Federal Agents improperly having in their possession warrants addressed not to them but to the United States Marshal, which are conceded to have been defective and the attempt is now being made to justify the procedure followed by the agents, notwithstanding the defective warrant, on the ground that, at the time of the arrest, search and seizure, they had information in their possession indicating that a felony had been committed.

The Federal agents contended that they did not use the warrants in making the arrest and they executed and filed sworn affidavits to this effect, notwithstanding which affidavits the Trial Court found that the warrants were used, and, in the course of its opinion, said:

> "Indeed, it is insisted by the Government that no use was made of the warrant at the time of the arrest, and that Agent O'Brien only took the papers with him 'for the purpose of reference as to the addresses of the various defendants.' This, however, is contradicted by the defendants Gowen and Bartels, who state in their moving affidavits that Agent O'Brien described the papers to them at the time of the arrest as 'search warrants', and exhibited them to justify the demand for a search of the offices. On that issue, I am inclined to accept the story of the defendants, as I do not think it is at all reasonable to suppose that the prohibition agents did not make some use of the warrant

> when challenged to show the authority under which they were proceeding in making the arrests. And I am satisfied they were challenged to show their authority, as arrests and seizures of the kind described in these papers are not ordinarily made without some demand for credentials."

In its memorandum opinion, the Court further said:

> "In disposing of this motion as above indicated, I do not wish to be understood as approving the practice followed by the Government in making these arrests. I can see no adequate reason why arrests of this kind should not be made by the United States Marshal under valid warrants issued in advance, and I think it would be most unfortunate if any other practice should be generally followed."

The Government's attempt to justify the arrest and search and seizure without a warrant, on the ground that probable cause existed, is met by a record which clearly establishes that such information as was in the possession of the agents was not the personal knowledge of the agents making the arrest but, on the contrary, merely information furnished by others through an intermediary, so that, reduced to its final analysis, this case marks an effort to have this Court sanction an arrest and search and seizure made without a warrant and based upon third-hand hearsay evidence.

It is an established principle that the agents who made the arrest possessed no greater authority than that of a private person making an arrest without a

warrant, and it is inconceivable that an arrest by a private person under such circumstances would be tolerated by this Court.

At the time the Government agents entered the premises, one of the petitioners and an employee were pacefully sitting in their offices, when, without justification or excuse, the Government officers entered the same, ransacking the premises upon the false representation that they had a search warrant, and then attempted to justify their procedure by affidavits which were perjurious according to the finding of the District Judge.

The arrest was made on June 6, 1929 and an indictment was not returned until December 20, 1929. It is submitted that no facts have been presented justifying the granting of the Respondent's Motion to Advance but that the cause should take its place in the proper order and be argued when it is reached. The record discloses that no haste has been shown by the Government heretofore, except the haste of the Government agents when making the arrest, without a proper warrant, and it is difficult to comprehend any ground for haste now.

Respectfully submitted,

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